IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.184 OF 2007

IN

SUMMARY SUIT NO.272 OF 2007

Aafaq Hussain Arif Hussain .. Plaintiff.

Versus

Aparna Thakur .. Defendant.

Mr.A.Davar with Mr.Rakesh Pandey i/b.Singhania Legal Services for plaintiff.

Ms.S.V.Deshmukh for defendant No.1.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 9TH JULY, 2007.

P.C.:

1. The plaintiff is a tailor by profession and has filed the instant suit as a Summary Suit for recovery of certain amounts from the defendant for stitching of uniforms.

2. It is contended that certain orders were placed by

the defendant on 2nd July, 2006 and copy of the said work order is purportedly annexed as Annexure "A". Consideration according to the plaintiff was determined to Rs.72,500/- for stitching of the clothes which were ordered by the defendant according to the plaintiff. The tailoring and stitching of the uniforms was completed and the delivery was effected on 21st July, 2006. The plaintiff states that the defendant was satisfied with the work.

3. In paragraph 8 of the plaint this is what is stated :-

> "8. The plaintiff, on the completion of the Work Order submitted a cash memo dated 24th July, 2006 of an amount of Rs.72,500/- (Rs.Seventy Two Thousand Five Hundred Only) to the defendant containing the details of the order along with the above mentioned amount. The plaintiff further submits that out of the entire amount of Rs.72,500/- (Rs.Seventy Two Thousand Five Hundred Only), the sum of Rs.10,000/- (Rs.Ten Thousand Only) had already been paid and remitted to the plaintiff’s account by the defendant in consideration for the Work Order. Therefore, the

said amount of Rs.10,000/- was deducted from the entire sum of Rs.72,500/- in the said cash memo mentioned above and a balance amount of Rs.62,500/- was shown to be final and due."

4. On the basis of the above, it is contended that repeated demands did not yield the necessary response and, therefore, the suit notice has been addressed. The suit notice has been replied by the defendant and she has categorically stated that the plaintiff did work for her and stitched the necessary clothes. The consideration was also determined but there was no contract and in any event, the payment was made partly by cash and partly by cheque in full and final settlement.

4. Reliance is placed in the affidavit filed in reply on this assertion and a copy of the acknowledgement has been annexed as Exhibit-D, running page 19.

5. It is in these circumstances, that I find that the claim is not maintainable as a Summary Suit. This is not a case where as observed by Delhi High Court, when the goods which are supplied through a bill on certain terms and conditions duly agreed to between the parties, that a conclusion can be drawn that a written contract has been

executed by parties.

6. This is a clear case where services have been availed of a tailor by a designer and upon oral instructions and measurements which are noted / taken down in writing alongwith quantity, the tailor has stitched the clothes and supplied the same. In any event, prima-facie, the acknowledgement produced is not something, even if disputed, which can straightaway give rise to a conclusion that the defence as raised has no basis at all. Ultimately, after receiving some amounts, if balance is still due and payable, the plaintiff will have to show that the receipt which is relied upon is not at all executed and signed by him. This is a matter of oral evidence. In such circumstances, the defendant is entitled to an unconditional leave to defend. The suit is transferred to the list of commercial causes. Written statement / additional written statement to be filed within a period of two weeks from today.

(S.C.Dharmadhikari, J.)